

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Ken's Buff and Plating Works
1816 21st Street
Sacramento, California 95814

EPA ID No: CAL 000 059 903

Respondent.

Docket HWCA 2004-0576

ENFORCEMENT ORDER, IMMINENT
AND SUBSTANTIAL ENDANGERMENT
DETERMINATION, AND SCHEDULE FOR
COMPLIANCE

Health and Safety Code
Section 25187

INTRODUCTION

The California Department of Toxic Substances Control (Department) issues this Order and Determination (Order) to Ken's Buff and Plating Works, Inc. (Respondent).

- 1.1. Site. Respondent generates, handles, and stores hazardous waste at the following site: 1816 21st Street, Sacramento, California 95814 (Site).
- 1.2. Inspection. The Department inspected the Site on July 27 and 28, 2004.
- 1.3. Generator Status. Respondent is a generator of the following hazardous wastes: Metal- and cyanide-bearing waste rinse water from electroplating operations, spent electroplating solutions containing dissolved metals, residues from plating solutions containing cyanides, and metal-bearing sludge from waste water treatment.
- 1.4. Jurisdiction. Health and Safety Code section 25187, authorizes the Department to order action necessary to correct violations when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted

pursuant thereto. Health and Safety Code section 25187(h) further authorizes the Department to require a person to take corrective action immediately upon the issuance of this Order and pending an appeal of this order, if the Department determines that the violations may pose an imminent and substantial endangerment to the public health or safety or the environment.

- 1.5. In the event of any inconsistency between this Order and the Notice of July 30, 2004, by the County of Sacramento Environmental Management Department, Respondent will comply with the more stringent of the two documents.

DETERMINATION OF VIOLATIONS AND
IMMINENT AND SUBSTANTIAL ENDANGERMENT

2. The Department has determined that:
 - 2.1. Respondent violated Health and Safety Code section 25201, in that on or about July 27 or 28, 2004, Respondent had stored the following containers holding hazardous caustic waste at the Site for more than 90 days without a permit or other grant of authorization from the Department:
 - 2.1.1. One 270-gallon "tote" labeled with an accumulation start date of "8-27-03".
 - 2.1.2. One 55-gallon container labeled with an accumulation start date of "1-7-02".
 - 2.1.3. One 55-gallon container labeled with an accumulation start date of "3-4-02."
 - 2.1.4. One 55-gallon container labeled with an accumulation start date of "7-1-01".
 - 2.1.5. One 55-gallon container labeled with an accumulation start date of "7-3-01".
 - 2.1.6. One 55-gallon container labeled with an accumulation start date of "10-1-01".

2.2. Respondent violated California Code of Regulations, title 22, section 66262.34, subdivision (f), in that on or about July 27 or 28, 2004, Respondent failed to have labels at the Site on the following containers with the following specific required information:

2.2.1. One 270-gallon "tote" holding spent caustic cleaning solution was not labeled with the full name and address of the generator.

2.2.2. Three 55-gallon containers holding hazardous waste "sludge from caustic cleaning bath", according to the owner, Mr. Kenny Carlton, were not labeled with any information required for hazardous waste containers (i.e., the container was unlabeled).

2.2.3. One 55-gallon container holding spent "caustic" solution was not labeled with the composition of the waste, or the hazardous properties of the waste.

2.2.4. Four 55-gallon containers holding spent "caustic" solution were not labeled with any information required for hazardous waste containers (i.e., the containers were unlabeled).

2.3. Respondent violated California Code of Regulations, title 22, section 66265.31, in that on or about July 27 or 28, 2004, failed to maintain and operate the Site in a manner so as to minimize the possibility of a fire, explosion, or unplanned sudden or non-sudden release of hazardous waste to air, soil, or surface water which could threaten human health or the environment, by the following acts or omissions:

2.3.1. Failing to have cleaned up a large volume of spilled hazardous plating process chemicals from the floor of the facility. There were spilled plating bath chemicals and sludge underneath the plating process tanks all over the floor of the facility. The sludge and spilled plating bath solutions were approximately 6 inches deep in some places. Mr. Kenny Carlton, owner of the facility, stated that the spilled plating bath chemicals and sludge are cleaned up "when the facility thinks it's needed".

2.3.2. Failing to have cleaned up hazardous waste polishing dust accumulated in the facility. There was polishing dust accumulated on the floor and on shelving and equipment in the facility. There were no containers being used to accumulate the polishing dust during the inspection, suggesting that facility was not cleaning up and containerizing the polishing dust. The spilled polishing dust was in very close proximity (i.e., within 10 feet) of a roll up door at the side of the facility that had been opened for ventilation.

2.4. Respondent violated California Code of Regulations, title 22, section

66265.173, in that on or about July 27 or 28, 2004, Respondent failed to keep containers of hazardous waste closed during storage, except when it is necessary to add or remove waste to the containers. The following containers were open when waste was not being added or removed:

2.4.1. One 55-gallon container holding spent caustic solution labeled with an accumulation start date of "3-4-02".

2.4.2. Three 55-gallon containers holding hazardous waste sludge from a caustic cleaning bath.

2.5. The foregoing violations constitute an imminent and substantial endangerment to human health or safety or the environment.

SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination of Violations and imminent and substantial endangerment, IT IS HEREBY ORDERED THAT:

Immediately upon the date of issuance of this Order, Respondent shall take the following actions with regard to the buffing and bead blasting dusts on the floor, and shall not open the Site except as expressly allowed by this Order:

3.1.1. Clean up and containerize all hazardous waste buffing and bead blasting dusts that have accumulated in the facility. The containers shall be

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labeled as hazardous waste in accordance with the California Code of Regulations, title 22, section 66262.34, subdivision (f). At a minimum, the labels should include the name and address of the facility, the hazardous characteristics of the waste, and the physical state of the waste (e.g., liquid, solid, etc.).

- 3.1.2. Shall not reopen until the dust is adequately contained. Respondent may reopen while the dust is stored onsite, but the containerized dust must be transferred to an authorized offsite hazardous waste facility within 90 days of the date the dust is placed in containers.
 - 3.1.3. Prepare a written plan specifying that all buffing and bead blasting dusts are to be cleaned up immediately when they are spilled in the facility. Respondent shall not reopen until the plan has been prepared.
- 3.2. Immediately upon the date of issuance of this Order, Respondent shall take the following actions with regard to the open and unlabeled containers of waste, and shall not open the Site except as expressly allowed by this Order:
- 3.2.1. Properly close and label all containers of hazardous waste. The label for hazardous waste containers shall include, at a minimum, the name and address of the Site, the hazardous characteristics of the waste, and the physical state of the waste (e.g., liquid, solid, etc.). Respondent shall not reopen until this action has been taken.
 - 3.2.2. Transfer all containers of hazardous waste that have been stored at the Site for 90 days or more to an authorized offsite hazardous waste facility. Respondent shall not reopen until this action has been taken.
 - 3.2.3. Label all unlabeled containers with statements that identify the contents of those containers. If the contents are unknown, then Respondent shall manage the containers as hazardous waste while the contents are analyzed by a certified lab, and shall then manage them as hazardous wastes if they are wastes, and the results of the analysis show that they are hazardous. Any containers determined to be holding process chemicals must be labeled sufficiently to identify the process chemicals and any hazard characteristics. Respondent shall not reopen until this action has been taken.

3.3. Immediately upon the date of issuance of this Order, Respondent shall take the following actions with regard to the floor and plating area containment system, and shall not open the Site except as expressly allowed by this Order:

3.3.1. Clean up and containerize any spilled sludges, liquids, or other material from the floor of the facility, and from the containment area under the plating tanks, and will repair any leaks in plating area containment system. Respondent shall not reopen until these actions have been taken. Thereafter, spilled liquids or sludges, or any other material, shall not be allowed to accumulate on the floor of the facility, or in the containment area under the plating tanks.

3.3.2. Respondent may reopen while the containers of sludges, liquids, and other materials are stored at the Site. However, the containerized waste must be transferred to an authorized hazardous waste facility with 90 days of the date the waste is placed in the containers.

3.4. Within 30 days of the date of the issuance of this Order, Respondent shall submit documentation to show that all items have been complied with. Documentation shall include but not be limited to copies of all manifests showing that all containerized wastes, and any waste removed from the floor, have been transferred to an authorized hazardous waste facility.

3.5. Except as otherwise indicated, all corrective action identified in Paragraphs 3.1.1 through 3.3.1 shall be completed within five days of the date of service of this Order. If corrective action is not taken on or before the date specified in this Order, the Department may take, or contract for the taking of, that corrective action and recover the cost from Respondent under the terms provided for in Health and Safety Code section 25187.5.

- 3.6. Submittals. All submittals from Respondent pursuant to this Order shall be sent simultaneously to:

Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Dennis Green, Chief
Hazardous Materials Division
Sacramento County Environmental Management Department
8475 Jackson Road, Suite 240
Sacramento, California 95826

- 3.7. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may otherwise be required.

- 3.8. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

- 3.9. Endangerment during Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Order) creates an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the

endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

3.10. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.1.1. Site Access. Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.12. Sampling, Data and Document Availability.

3.12.1. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent, or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Order.

- 3.12.2. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order.
- 3.12.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either: (a) comply with that request, (b) deliver the documents to the Department, or (c) notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the documents prior to destruction.
- 3.13. Government Liabilities. The Department shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the Department be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.
- 3.14. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.
- 3.15. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

- 4.1. Additional Enforcement Action. Based on the foregoing determination of violations and imminent and substantial endangerment, the Department may issue a Complaint for Penalty at a later time to assess a penalty against Respondent. By issuance of this Order, the Department does not waive the right to take further enforcement actions. The list of violations in Paragraphs 2.1 through 2.4 is not intended to be exhaustive, and the Department does not waive the right to cite additional violations in a subsequent order.
- 4.2. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code, section 25188, and other applicable provisions of law.
- 4.3. Parties Bound. This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.
- 4.4. Time Periods. "Days" for purposes of this Order means calendar days.
- 4.5. Privileges. Nothing in this Consent Agreement shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Consent Order.

RIGHT TO A HEARING

5. Respondent may request a hearing to challenge this Order. Appeal procedures are described in the attached Statement to Respondent. However, pursuant to Health and Safety Code section 25187, subdivision (h), requesting an appeal does not stay the schedule for compliance.

EFFECTIVE DATE

6. This Order is effective immediately upon the date of issuance indicated below because the Department has determined that the violations associated with these paragraphs may pose an imminent and substantial endangerment to the public health or safety or the environment.

Date of Issuance: 6 August 2004 Department of Toxic Substances Control

Original signed by Charles A. McLaughlin

Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch
Statewide Compliance Division